

STATE'S RESPONSE TO DEFENDANT'S MOTION TO REVEAL IDENTITY OF CONFIDENTIAL INFORMANT

Under Rule 15.4(b), Ariz. R. Crim. P., confidential informants' identities are not to be revealed if disclosure would endanger the informant or the investigation. The defendant bears the burden of showing that the informant is likely to have information bearing on the case.

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS:

On or about October 2, 2000 and October 3, 2000, Phoenix Police Department Detective Ramos, received information from a confidential and reliable informant, who between the dates of October 2, 2000 and October 3, 2000, learned that a Mexican male named "Aleman," hereinafter referred to as the defendant, was conspiring to commit kidnapping of a family residing in Maricopa County. The information received was corroborated when Detective Ramos made a telephone call to the defendant and asked if he had any work for him to do. The defendant claimed that he had been staking out a house for about a year and a half and that the person living there was a man they called "El Doctor." The defendant said this man had ripped off his brother for one hundred thousand dollars. The defendant then stated that had a wife and two kids, and that his plan of attack was to go in the house, kidnap "El Doctor," and take him to a nearby bank to withdraw the \$100,000 he owed his brother. The defendant told the detective he would pay \$15,000 for the job once it was done and talked about how much he disliked "El Doctor." The defendant provided "El Doctor's" address so that Detective Ramos could go directly to his house.

On October 4, 2000, the defendant told the detective where to meet him and what he would be wearing. Later that day, Phoenix Police Department Sergeant Jaramillo, Detective Maya, and Detective Ramos were approached by the defendant. The men then went to view "El Doctor's" residence before nightfall. Detective Ramos asked the defendant what he was going to do after they were done, to which the defendant responded, "I'll take care of them, if he doesn't come up with the money." The defendant told the detectives where he wanted them to help carry out his plan, and also informed the detectives that he had a gun as well as gloves, tape, and walkie-talkies. The defendant explained that all of them were going to take "El Doctor" to the bank and wait until it opened in the morning, at which time they would have "El Doctor" withdraw the money. It was at this time that Detective Ramos drove all of them to the Conoco Station, where the pre-arranged arrest was to take place. When they arrived, the defendant was taken into custody. Later that day, a search warrant was executed at 9247 East Fairfield Street and the evidence found corroborated the information that the suspect had provided to Detective Ramos during his investigation. The defendant was then booked and charged with conspiracy to commit kidnapping, armed robbery, burglary, and extortion.

LEGAL ARGUMENT:

Rule 15.4 (b) (2) of the Arizona Rules of Criminal Procedure provides:

b. Materials Not Subject to Disclosure.

(2) Informants. Disclosure of the existence of an informant or of the identity of an informant who will not be called to testify shall not be required where disclosure would result in substantial risk to the informant or to the informant's operational

effectiveness, provided the failure to disclose will not infringe the constitutional rights of the accused.

Arizona courts have adopted and followed the standard set out in *Rovario v. United States*, 353 U.S. 53, 77 S.Ct. 623 (1957), which sets forth the general guidelines regarding the disclosure of confidential informants. That case set out a balancing test to assist courts in determining when the public interest in providing confidentiality to informants encroaches on a defendant's constitutional right to prepare an adequate defense at trial. The test involves the balancing of three factors:

1. The level of the informant's activity;
2. The helpfulness of the disclosure to the asserted defense;
and
3. The government's interest in non-disclosure.

The court has also indicated that, in weighing the factors, the defendant has the burden of proving that the informant is likely to have evidence bearing on the case:

[W]e must keep in mind that a defendant seeking to overcome the based policy of protecting an informant's identity, has the burden of proving that the informant is likely to have evidence bearing on the merits of the case. . . . Speculation as to his knowledge of peripheral aspects of the case is not sufficient to bring the facts within *Rovario, supra*.

State ex rel Berger v. Superior Court, 111 Ariz. 429, 430, 531 P.2d 1136, 1137 (1975). In applying the facts of the instant case to the three-part test in *Rovario, supra*, it is clear that defendant cannot make the necessary showing to overcome the State's privilege of non-disclosure.

1. Level of the informant's activity

The CRI's level of participation is limited to providing Detective Ramos with information that a Mexican male named Aleman was conspiring to commit kidnapping of a family in Maricopa County. The CRI was not present and did not participate in the subsequent investigation.

2. The helpfulness of the disclosure to the defense

The defendant argues that the CRI provided Detective Ramos with the information pertaining to the conspiracy. This does not suggest that the CRI can testify to material facts bearing on the merits of the case. As stated above by the court in *Berger v. Superior Court, supra*, speculations of aspects of a case are insufficient to sustain the defendant's factual showing that the CRI is a material witness.

The defendant's burden is to show that "in view of the evidence the informer would be a material witness on the issue of guilt which might result in exoneration and the non-disclosure of his identity would deprive the defendant of a fair trial." *State v. Grounds*, 128 Ariz. 14, 15, 623 P.2d 803, 804 (1981).

3. The government's interest in non-disclosure

Given the nature of criminal investigations, informants are an indispensable part of police work. Undercover officers are required to work with informants and the information they provide on an almost a daily basis. "The policy of the informant's privilege is in protecting police informants and in maintaining a steady supply of information to our law enforcement agencies." *State v. Gutierrez*, 121 Ariz. 176, 182, 589 P.2d 50, 56 (1978). Disclosure of the

CRI in the instant case would either result in substantial risk to the CRI as well as to his/her operational effectiveness.

CONCLUSION:

The State's privilege against disclosure of the confidential informant can only be overcome if the defendant proves, on balance, that his individual rights outweigh society's rights. The defendant has failed to meet his burden. For the reasons listed above, the State respectfully requests that this court deny the defendant's motion for disclosure.